STATE OF MICHIGAN

COURT OF APPEALS

FAY LATTURE,

Plaintiff-Appellee,

v

LARRY EMMERLING,

Defendant,

and

REBECCA FREIFELD and JULIE KEYES,

Defendants-Appellants,

and

DIANE REED,

Defendant.

UNPUBLISHED
September 17, 2013

No. 304833
Genesee Circuit Court
LC No. 07-086680-NZ

Before: METER, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Defendants appeal as of right the judgment entered in favor of plaintiff on the jury verdict and the trial court's denial of defendants' motions for directed verdict, judgment notwithstanding the verdict and a new trial. For the reasons set forth below, we affirm.

I. BACKGROUND

Plaintiff Fay Latture was Superintendent of the Clio school district. Rebecca Freifeld and Julie Keyes (defendants) were parents with children who attended Clio public schools. Rebecca Freifeld was also City Commissioner for the city of Clio. At no time were defendants employees of the Clio school district.

Over the years defendants appeared at Board of Education (Board) meetings in their capacity as parents. They voiced several points of dissatisfaction with plaintiff's performance as Superintendent and made several requests for materials through the Freedom of Information

Act (FOIA). In the spring of 2005, defendants, with the help of school teacher Diane Reed, found a way to infiltrate plaintiff's e-mails.

Plaintiff began to notice her e-mails were being deleted when people told her they had e-mailed her and questioned why she had not responded. Plaintiff would go back into her e-mails and could not find what they sent. Plaintiff could not account for how people at Board meetings knew whether she was taking her vacation days or not and where she was going; whether she used personal days and did she report them; and whether she was attending certain events. Parents came to Board meetings with e-mails, sometimes crying, sometimes upset and angry concerning disclosures from the e-mails. Others contacted plaintiff with concerns that confidential information that they e-mailed her may have been released. In addition to school related communications plaintiff's e-mails contained medical information, communications with attorneys and private discussions with her sister. During this time she experienced anxiety, nausea, headaches, stomach ache, and could not sleep. Coworkers, her husband, and sister observed her altered demeanor, anxiety, and physical distress.

Plaintiff reported her suspicions that her e-mail was being accessed to the Clio School District Director of Technology Howard Buetow, who investigated and reported his findings to Clio Chief of Police James McLellan. Buetow ultimately traced the intrusions to the internet provider (IP) addresses of Freifeld and Keyes. Buetow determined that plaintiff's e-mails were read 9,081 times.

Chief McLellan conducted an investigation where Reed, Freifeld, and Keyes provided Proffer Statements in which they admitted to accessing plaintiff's e-mails without authorization. Freifeld additionally admitted to having taken plaintiff's trash on three occasions. Reed admitted that in April 2005 she sent plaintiff an e-mail with Spyware software on it that allowed her to record plaintiff's keystrokes and obtain plaintiff's school e-mail password. Reed admitted to reading e-mails that involved student matters, Board member communications, and some information that would have been embarrassing and caused plaintiff distress if revealed publicly. Reed told Chief McLellan she shared the password with Freifeld and Keyes on May 24, 2005. Keyes admitted that the three of them did meet in her basement on that day and accessed plaintiff's e-mails for over two hours, printing them out and storing them in a binder. Keyes further admitted that she forwarded the e-mails to other people. Freifeld admitted the same involvement as Reed and Keyes, and added that she anonymously delivered plaintiff's e-mails to people by leaving them at their residences.

In October 2005, plaintiff took her home computer to Paul Lee, owner of Clio Computers in Clio, Michigan, because it was running slow and she thought it had a virus. Eighty to ninety percent of Lee's daily work dealt with spyware, adware and viruses. Lee told plaintiff that her home computer had Spyware on it. In December 2005, Chief McLellan told plaintiff that her school e-mails had been stolen and that someone had taken her garbage. Around the same time, Buetow told plaintiff that defendants and Reed were the ones that had accessed her school e-mails.

Reed, Keyes, and Freifeld pled guilty to the misdemeanor charge of conspiracy to commit fraudulent access to computers in January 2006.

Plaintiff filed a lawsuit against defendants and others in July 2007 alleging civil conspiracy, two counts of eavesdropping, intrusion upon seclusion, injurious falsehood, and intentional infliction of emotional distress. After dismissal against the others and the grant of summary disposition on the two eavesdropping counts, a jury trial commenced on February 1, 2011. Defendants motioned for directed verdict on two occasions, once at the end of plaintiff's case in chief and again at the close of defendants' evidence. The first motion was granted in part[1] and denied in part. The second motion was denied altogether. Plaintiff's three claims of intrusion upon seclusion, intentional infliction of emotional distress and civil conspiracy were submitted to the jury.[2]

On February 28, 2011, a jury found in favor of plaintiff on all three claims, against each defendant. It awarded non-economic damages against Freifeld in the amount of $250,000 and against Keyes in the amount of $125,000. The trial court denied defendants' motions for judgment notwithstanding the verdict and a new trial.

II. DIRECTED VERDICT

Defendants contend their motions for directed verdict should have been granted because plaintiff failed to prove all the elements of her intrusion upon seclusion and intentional infliction of emotional distress claims. We disagree.

We review motions for directed verdict de novo. *Krohn v Home-Owners Ins Co*, 490 Mich 145, 155; 802 NW2d 281 (2011). All evidence presented up to the time of the motion is considered "in the light most favorable to the nonmoving party, granting that party every reasonable inference, and resolving any conflict in the evidence in that party's favor to decide whether a question of fact existed." *Derbabian v S & C Snowplowing, Inc*, 249 Mich App 695, 701-702; 644 NW2d 779, 782 (2002). A directed verdict is appropriate only when no factual question exists upon which reasonable minds could differ. *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 427-428; 711 NW2d 421 (2006). When the evidence could lead reasonable jurors to disagree, the court may not substitute its judgment for that of the jury. *Moore v Detroit Entertainment, LLC*, 279 Mich App 195, 202; 755 NW2d 686 (2008).

A. INTRUSION UPON SECLUSION

The tort of intrusion upon seclusion contains three elements: (1) the existence of a secret and private subject matter; (2) a right possessed by the plaintiff to keep that subject matter private; and (3) the obtaining of information about that subject matter through some method objectionable to a reasonable man. *Doe v Mills*, 212 Mich App 73, 88; 536 NW2d 824, 832 (1995).

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[1] The trial court granted directed verdict on plaintiff's injurious falsehood claim which was against defendant Keyes only.

[2] Defendants have only briefed and therefore, only appealed plaintiff's intrusion upon seclusion and intentional infliction of emotional distress claims.

First, we must determine whether plaintiff's e-mails were private. Unless defined in a statute, a "word or phrase must be accorded its plain and ordinary meaning[.]" *People v Ryan*, 295 Mich App 388, 400; 819 NW2d 55 (2012); MCL § 8.3a; MSA § 2.212(1). A court is allowed to consult dictionary definitions when a word is undefined. *People v Gregg*, 206 Mich App 208 at 211-212. Our Court has looked to the *Merriam-Webster's Dictionary* to define the term private. *People v Stone*, 463 Mich 558, 563; 621 NW2d 702, 704 (2001); *Dickerson v Raphael*, 222 Mich App 185, 193; 564 NW2d 85, 89 (1997) *rev'd on other grounds* 461 Mich 851 (1999). That definition describes private as, "intended for or restricted to the use of a particular person, group, or class." *Merriam-Webster's Dictionary* (1995). *Black's Dictionary* further defines "private" as "confidential; secret." (17th ed.) Thus, in order for plaintiff's e-mails to have been considered private they must have been "intended for or restricted to the use of a particular person, group, or class."

Plaintiff's school e-mail was provided by the Clio school district and maintained by the school's computer server. Only individuals with a password, provided by the school district, could use the school e-mail system. There was a specific and limited method by which a limited class of persons could access the e-mails of persons other than themselves and the contents of such observation were confidential. The characteristics of the school e-mail system were such that this Court can conclude that the system was restricted and therefore, private between users. Thus, plaintiff's e-mails were private.

The question then becomes whether plaintiff's e-mails contained private information. According to the plaintiff, she communicated private matters with her sister, with attorneys, with parents, and with medical professionals. Communications between a lawyer and client are recognized as confidential and privileged statements made within a protected relationship "under circumstances showing that [the] speaker intended [the] statement only for [the] ears of [the] person addressed . . . " *People v Bragg*, 296 Mich App 433, 453; 824 NW2d 170 (2012); (citation omitted). "Matters concerning a person's medical treatment or condition are also generally considered private." *Doe v Mills*, 212 Mich App 73, 83; 536 NW2d 824, 830 (1995). "[W]hether plaintiff's conversation was private depends on whether she intended and reasonably expected it to be private at the time and under the circumstances involved." *Dickerson v Raphael*, 461 Mich 851; 601 NW2d 108 (1999). At Board meetings, parents definitely expressed their expectation that certain matters in their emails that were disclosed to third parties should have been confidential to, at best, a limited group of persons. The plaintiff, herself intended the matters in the e-mails to be private. Viewing this evidence in a light most favorable to plaintiff, there was sufficient evidence to determine that plaintiff's e-mails contained private information.

Next, it is necessary to determine whether defendants read any of the private subject matter in plaintiff's e-mails. Co-conspirator Reed admitted that she read some e-mails that contained private matters and that she shared and forwarded e-mails to Freifeld. Freifeld admitted that she then shared e-mails with Keyes. Buetow determined that e-mails were read over 9,000 times in a matter of just months. Defendants' unfettered access to the entirety of plaintiff's e-mails, subsequently granted them access to private and non-private matters. The trial court appropriately found that there was evidence that defendants read private information from plaintiff's e-mails.

Defendants argue that they had a right to access and disseminate plaintiff's private e-mails. First, they contend that plaintiff wrongly asserted the privacy rights of her children. Second, they allege that plaintiff's privacy right was voided by the school district's technology policy, and third, that they had a First Amendment right to expose what they believed were matters of public concern.

Defendants' standing argument is of no consequence to the trial judge's denial of their motions for directed verdict. The trial judge found the intrusion was reading any e-mail and accessing garbage. Even if plaintiff's children's medical information were not considered, there was still evidence of other private matters including communicating with attorneys regarding the lawsuits she was involved in and the private conversations with her sister.

Likewise, the Clio school district's technology policy did not void plaintiff's claim that she had a right to privacy. The Clio school district e-mail system was a private system that was restricted to use by password holders only. Defendants were not employees of the school district, were not password holders and did not have permission to access the school e-mail system. Plaintiff maintained a privacy right against third parties, like the defendants, who would not, under any technology policy, be afforded the opportunity to access her e-mails.

Lastly, defendants' First Amendment argument does not affect plaintiff's intrusion upon seclusion claim. Defendants' conduct at Board meetings and requests for information under FOIA may have been protected by the First Amendment, but defendants cite no First Amendment authority that would allow them to infiltrate a school e-mail system and rummage through the garbage of the school's Superintendent. Defendants cannot "announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to either to sustain or reject his position." *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

"An action for intrusion upon seclusion focuses on the manner in which information is obtained." *Doe*, 212 Mich App at 88. Plaintiff established the third element for this claim that the information be obtained "through some method objectionable to a reasonable man." *Id*. It is undisputed that defendants illegally accessed the Clio school's computer system. Criminal activity is an objectionable method of obtaining information.

Viewing all legitimate inferences in the light most favorable to the plaintiff, the trial court did not err in denying defendants' motions for directed verdict and determining that there was sufficient evidence on each element of plaintiff's intrusion upon seclusion claim to proceed to the jury. *Chouman v Home-Owners Ins Co*, 293 Mich App 434, 441; 810 NW2d 88 (2011).

B. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The tort of intentional infliction of emotional distress contains four elements: (1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 342; 497 NW2d 585 (1993).

Defendants argue that they should have been granted a directed verdict. They specifically contend that the conduct which plaintiff identified as being extreme and outrageous was protected by the First Amendment, that plaintiff did not prove intent or causation and that plaintiff's severe emotional distress was not solely attributable to defendants, but to a variety of other circumstances occurring at the same time. They assert that plaintiff survived a directed verdict based upon perjured testimony and that the court should have also, granted the directed verdict based upon insufficiency of the pleadings.

Defendants challenge whether their conduct viewed in the light most favorable to the plaintiff was protected by the First Amendment, relying on their FOIA requests and their addressing the Board on matters of public concern. However, the trial judge did not consider the conduct that defendants contend was protected by the First Amendment when she denied defendants' motions for directed verdict.

> [A]ddressing matters at the Board meetings, submitting FOIA requests, those wouldn't make it; or I don't think the walkout or the t-shirts would either, but these longer term activities, shall we say, with respect to e-mails, garbage, passing out e-mails at Board meetings demonstrated intent" to undermine or discredit plaintiff.

The trial judge correctly understood that the claimed extreme and outrageous conduct was actually the infiltration and unprivileged dissemination of plaintiff's e-mails and the taking of her garbage. Defendants have offered no argument or case authority to support the extension of First Amendment protection to their illegal access of the plaintiff's e-mail or their dissemination of those e-mail communications.

Since the trial court's denial was based on that activity, not the board presentations, defendants' argument is unavailing. We note that,

> "It is for the trial court to initially determine whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. But where reasonable individuals may differ, it is for the jury to determine if the conduct was so extreme and outrageous as to permit recovery." *Hayley v Allstate Ins Co*, 262 Mich App 571, 577; 686 NW2d 273, 277 (2004); (citation omitted).

This Court has recognized two instances where a plaintiff can prove the defendant acted with intent or recklessness. The first is where a defendant specifically intended to cause plaintiff emotional distress and the second is where defendant's conduct was "so reckless that any reasonable person would know emotional distress would result." *Lewis v LeGrow*, 258 Mich App 175, 197; 670 NW2d 675, 689 - 690 (2003) quoting *Haverbush v Powelson*, 217 Mich App 228, 236–237; 551 NW2d 206 (1996). Defendants' admissions to law enforcement and the trial testimony of Reed, are evidence of their motive in accessing and disseminating plaintiff's e-mails. Such evidence was sufficient to survive the first motion for directed verdict at the close of the plaintiff's case in chief. The second motion was brought at the close of all proofs after the defendants had each given further testimony about their intent. It was not error for the trial judge, in viewing all evidence in a light most favorable to plaintiff, to allow the jury to determine plaintiff's claim that defendants intended to cause her severe emotional distress.

A review of the trial record demonstrates that plaintiff presented competent evidence on the causation element of her claim of intentional infliction of emotional distress. She presented evidence of having sought counseling from ministerial staff because of defendants' conduct. Further, her co-workers , husband, and sister noticed a marked change in her demeanor after the e-mails were accessed and disseminated. Numerous other witnesses, also, gave testimony regarding her change in demeanor and behavior after the emails were disseminated. Plaintiff testified that she had trouble sleeping, and suffered a loss of appetite and painful stomach aches. Plaintiff additionally offered testimony regarding medical treatment, although she was not required "to have sought medical treatment to establish sufficient distress." *Haverbush*, 217 Mich App at 235. While there was testimony regarding other possible causes for plaintiff's distress, this Court will not substitute its judgment for the judgment of the jury when "reasonable jurors could honestly have reached different conclusions." *Silberstein v Pro–Golf of America, Inc*, 278 Mich App 446, 455; 750 NW2d 615 (2008). The trial court did not err in denying plaintiff's motions for directed verdict because reasonable jurors could find that plaintiff suffered emotional distress.

Defendants also alleged that plaintiff avoided a directed verdict and obtained a judgment based upon perjured testimony. As fuel for this argument, defendants contend that plaintiff gave testimony that was contrary to that of other witnesses. When testimony is in direct conflict, it presents an issue of witness credibility that is proper for the jury to decide. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129, 137 (1998). Furthermore, "conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial." *People v McCray*, 245 Mich App 631, 637-638; 630 NW2d 633 (2001). Defendants also singled out instances where plaintiff testified inconsistently. However, simply pointing to inconsistencies in testimony does not prove perjury. *People v Cash*, 388 Mich 153, 162; 200 NW2d 83 (1972). Establishing perjury requires proof that plaintiff willfully provided a material and false statement. *In re Contempt of Henry*, 282 Mich App 656, 677–678; 765 NW2d 44 (2009). Defendants failed to show how plaintiff committed perjury.

Defendants further challenge the sufficiency of plaintiff's complaint. We find no error in the trial court's determination that plaintiff's allegations were sufficiently pled. MCR 2.111(B)(1) required plaintiff to provide a "statement of the facts, without repetition, on which [she relied] in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend." A review of the lower court record, including plaintiff's amended complaint and the trial court's acceptance of plaintiff's answers to interrogatories, leads this Court to the conclusion that the trial judge did not err in determining that plaintiff's claims were sufficiently pled to notify defendants of the conduct they would be defending against.

C. JUDGMENT NOTWITHSTANDING THE VERDICT (JNOV) / NEW TRIAL BASED ON EVIDENTIARY ERRORS

Defendants argue that a new trial should have been granted and the jury's verdict should be nullified in this case because of the trial court's decisions regarding the admissibility of evidence. We conclude otherwise.

We review a trial court's decision regarding a motion for a new trial as well its decision whether to admit evidence for an abuse of discretion. *McManamon v Redford Tp*, 273 Mich App 131, 138; 730 NW2d 757, 762 (2006); *Waknin v Chamberlain*, 467 Mich 329, 332; 653 NW2d 176, 178 (2002). An abuse of discretion occurs when the result is outside the range of principled outcomes. *Barnett v. Hildago*, 478 Mich. 151, 158, 732 N.W.2d 472 (2007).

We review a trial court's decision on a motion for judgment notwithstanding the verdict de novo. *Sniecinski v BCBSM*, 469 Mich 124, 131; 666 NW2d 186 (2003). Judgment notwithstanding the verdict should be granted only when there was insufficient evidence presented to create an issue for the jury. *Heaton v Benton Constr Co*, 286 Mich App 528, 532; 780 NW2d 618 (2009). When deciding a motion for JNOV, the trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party and determine whether the facts presented preclude judgment for the nonmoving party as a matter of law. *Merkur Steel Supply Inc v Detroit*, 261 Mich App 116, 123-124; 680 NW2d 485, lv den 471 Mich 884 (2004). If the evidence is such that reasonable people could differ, JNOV is improper. *Foreman v Foreman*, 266 Mich App 132, 136; 701 NW2d 167 (2005), lv den 475 Mich 863 (2006).

Defendant Freifeld asserts that the trial court abused its discretion and she was prejudiced by its refusal to allow her to testify about her experiences in jail.[3] Freifeld wanted the jury to know that she was celled next to a murderer, strip searched and humiliated by her transfer from the jail to the courthouse. She alleged that this testimony would have shown her remorse for what she did as well as contradicted the cavalier attitude she felt the jury was left with when plaintiff presented a portion of a *Flint Journal* article. The trial court did not err in ruling that these facts were irrelevant to the claimed torts. Additionally, Freifeld was not prejudiced by the exclusion of this evidence because she was still able to convey her remorse and attitude to the jury through her own testimony and through cross-examination of plaintiff.

Freifeld also claims the trial court abused its discretion in allowing plaintiff to play portions of a video tape of her allocution that showed Freifeld laughing and depicted a response of Freifeld's out of context. While the tape itself was not a part of the record transmitted to this Court, we note in the transcript that the parties conducted a bench conference immediately before it was played, presumably concerning the contents of the tape.[4] There was clearly a problem with what was played for the jury with unknown persons asking that the sound be turned off and the trial judge ultimately ordering that sound be turned down until the montage tape completed. However, Freifeld's counsel offered no objection after the videotape was concluded either to its playing or to opposing counsel's questions regarding the laughter depicted on the tape. Instead, Freifeld provided the jury with an explanation for the tape. She told the jury that she laughed when she gave her guilty plea because she normally laughed when she was nervous, which she was when she pled guilty. She further explained that the video clip played did not provide her

[3] Freifeld was sentenced to jail when she pled guilty to the misdemeanor charge of illegally accessing the Clio school district computer system.

[4] We note that the videotape was used to refresh Freifeld's memory during her cross-examination and, therefore, was not substantive evidence.

entire response, and then read her entire statement into the record for the jury. Thus, while the jury did not see the entire video, they did receive evidence of her entire statement and her explanation of her laughter. The trial court, while not admitting error, held that the video was short and would have had minimal impact on the jury. "In civil cases, evidentiary error is considered harmless unless declining to grant a new trial, set aside a verdict, or vacate, modify, or otherwise disturb a judgment or order appears to the court inconsistent with substantial justice." *Guerrero v Smith*, 280 Mich App 647, 655; 761 NW2d 723 (2008); (citations and quotation marks omitted). At worst, any error was harmless and defendants have not shown this Court how the trial court's denial of their motion for JNOV and a new trial resulted in substantial injustice.

Defendants argue that a new trial should be granted because the jury was allowed to consider privileged information. Defendants are correct in asserting that "information given to police officers regarding criminal activity is absolutely privileged." *Hall v Pizza Hut of America, Inc*, 153 Mich App 609, 619; 396 NW2d 809 (1986). However, what occurred in the instant case did not involve defendants reporting criminal activity to the police. What the jury heard was that Freifeld learned of an e-mail containing child pornography from Reed who presented it to her on a thumb drive. Freifeld then forwarded the e-mail to Keyes who in turn forwarded it to a Board member. Keyes communicated the fact that she knew of child pornography under the circumstance of providing Chief McLellan with a proffer statement on December 7, 2010, not for the purpose of reporting criminal activity. The communication was therefore, not privileged.

Defendants also claimed that a new trial should be granted because plaintiff did not produce medical records in support of the medical treatment she claimed she received and was therefore, unfairly awarded economic damages. However, the plaintiff did not request, the judge did not instruct nor did the verdict reflect economic damages.

Defendants further claim a new trial should be granted because Lee was erroneously qualified as an expert and allowed to bolster plaintiff's theory that they were involved in using the Remote Spy program that only Reed testified to using. Defendants failed to preserve this asserted error. "The purpose of the appellate preservation of error requirements is to induce litigants to do what they can in the trial court to prevent error and eliminate its prejudice, or to create a record of the error and its prejudice." *People v Schmitz*, 231 Mich App 521, 527-528; 586 NW2d 766 (1998). Defendants' attorneys voire dired Lee and after doing so did not object to him testifying as an expert witness.

Lastly, defendants contend that the trial court erred by permitting certain rebuttal evidence. "The scope of rebuttal in civil cases is within the sound discretion of the trial court." *Taylor v Blue Cross & Blue Shield of Michigan*, 205 Mich App 644, 655; 517 NW2d 864 (1994). The purpose of rebuttal evidence is to "contradict, repel, explain or disprove evidence produced by the other party and tending directly to weaken or impeach the same." *People v Figur*es, 451 Mich 390, 399; 547 NW2d 673, 677 (1996). The evidence offered by plaintiff was for a proper rebuttal purpose and anything improper was limited or cured by the trial court.

Defendants specifically contend that plaintiff's introduction of a 422 page log created by Buetow was prejudicial.[5] Although Freifeld preserved this issue by objecting at trial, moments later she abandoned it by not taking advantage of the opportunity the trial court offered to cure the issue. See *Computer Network, Inc v AM General Corp*, 265 Mich App 309, 330; 696 NW2d 49, 63 (2005). Freifeld explained to the court that the proposed exhibit was being "dumped" on them without an opportunity to review it and the judge agreed. Freifeld wanted to review the document before Buetow testified and the judge said that they would have to stop for the day and commence tomorrow in order to give defendants enough time. However, Freifeld did not want to quit early, so the judge proceeded. In this instance, the trial judge offered to give Freifeld the rest of the day to look over the 422 page log and return the next morning, but she refused and Keyes made no objection at all. We cannot determine that the trial court abused its discretion in admitting this evidence when defendants refused to alleviate the problem of which they now complain.

"An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). A review of the trial record illustrates the trial judge sustained objections by defendants to evidence that should have been in plaintiff's case in chief, and to the introduction of entirely new evidence. In those instances, the trial court exercised its discretion in limiting rebuttal evidence in favor of defendants. The trial judge exercised continuous control of the testimony in rebuttal. By way of example, after several expansive answers to narrow questions, the trial judge limited plaintiff's answers to a yes or no. This occurred because the trial court recognized that plaintiff gave answers that raised entirely new issues. The trial court did not abuse its discretion on this issue and properly denied JNOV and a new trial for defendants.

When reasonable jurors could have honestly reached different conclusions, the jury verdict must stand. *Genna v Jackson*, 286 Mich App 413, 417; 781 NW2d 124, lv den 486 Mich 1043 (2010). Only when the evidence failed to establish a claim as a matter of law is JNOV appropriate. *Sniecinski*, 469 Mich at 131; *Prime Fin Servs LLC v Vinton*, 279 Mich App 245, 255-256; 761 NW2d 694, lv den 482 Mich 1069 (2008). In this instance, plaintiff presented sufficient evidence in her case in chief to support both her intrusion upon seclusion claim and intentional infliction of emotional distress claim.

Accordingly, we hold that the trial court did not err in its denying defendants' motions for directed verdict and judgment notwithstanding the verdict. Further, we hold that the trial court did not abuse its discretion in denying defendants' motion for a new trial and for its decisions regarding the admissibility of evidence.

Affirmed.

/s/ Patrick M. Meter

[5] The document also showed accesses to plaintiff's calendar and task list that contradicted Freifeld's testimony that she never saw such documents.

/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens